IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re United States Patent Application of:		**Docket No.:**	**4185-101-CIP2**
Applicant:	**GRADY, Jeff**	**Conf. No.:**	**1103**
Application No.:	**10/780,329**	**Art Unit:**	**2618**
Date Filed:	**February 17, 2004**	**Examiner:**	**Nguyen Thanh Vo**
Title:	**AUDIO PLAYER ASSEMBLY COMPRISING AN MP3 PLAYER**	**Customer No.:**	**23448**

SECOND DECLARATION OF JEFF GRADY IN SUPPORT OF U.S. PATENT APPLICATION NO. 10/780,329

1. My name is Jeff Grady, and I am the inventor of the subject matter claimed in U.S. Patent Application Serial No. 10/780,329 ("the present application").

2. I am the President and Chief Executive Officer of Netalog, Inc. I founded Netalog in 2001 and I have been employed continuously by the company since its inception. Netalog does business as "Digital Lifestyle Outfitters," abbreviated as "DLO." Netalog's core business is designing and selling accessories for portable digital devices, including, for example, the iPod® portable digital media storage and playback device manufactured by Apple Computer, Inc. Products designed and sold by Netalog include the IBOOM® boombox for iPod; the TRANSDOCK™ combination docking cradle / battery charger / FM transmitter for vehicular use; and the HOMEDOCK DELUXE™ home entertainment center docking station with on-screen navigation.

3. I am the inventor or co-inventor on numerous patents and patent applications covering inventions relating to above-identified products, including: the present application relating to the IBOOM® product; U.S. Patent No. 6,591,085, U.S. Design Patent No. D531,158, and other pending U.S. utility patent applications relating to the TRANSDOCK™ product; and numerous pending U.S. utility patent applications relating to the HOMEDOCK DELUXE™ product.

4. In connection with my employment at Netalog, I am highly familiar with portable digital electronic devices and accessories for such devices. In addition to my activities as an inventor of accessories for portable digital electronic devices, I have also conducted extensive market

research and business development efforts relating to such accessories. Accordingly, I understand how accessories for portable digital electronic devices are designed, manufactured, marketed, and sold.

5. I am familiar with the present application and how it would be perceived by one of ordinary skill in the art at the time the invention was made. The present application was filed with three drawing figures, as reproduced in Exhibit A. Each figure shows an audio player assembly, configured as a boombox, adapted to receive and operate with a portable digital media storage and playback device, such as an iPod® device. The audio player assembly depicted in each figure shows two raised cylindrical knobs placed prominently along the front of the unit within view and easy reach of the user. The size of each raised cylindrical knob is apparent by comparison to the iPod device illustrated as docked with the audio player assembly or boombox. The size, shape, and placement of each raised cylindrical knob are consistent with the use of such cylindrical knob as a control element to be grasped and operated by a user. Each raised cylindrical knob is disposed outside the modular docking unit. Upon review of the drawings and the written description, each of these stated facts would be immediately apparent to one of ordinary skill in the art at the time the invention was made.

6. The text of the present application as originally filed discloses a "frequency tuning control," for example, at page 4, the second full paragraph, and at page 11 (original claim 13), referring to a "frequency tuning control." It is noted that original claim 13 depended from original claim 2, which in turn depended from original claim 1. Each of the foregoing textual disclosures of a "frequency tuning control" is reproduced in context below.

> Such modular docking unit **may comprise** various functional elements, including but not limited (a) means for retaining the MP3 player in position in the docking cavity; (2) coupling means for connection with an audio out port of the MP3 player, for receiving the audio signal therefrom; (3) amplifier for amplifying the received audio signal before such signal is outputted by the speaker; (4) power/charging circuitry for charging the MP3 player docked therein; (5) indicator lights for indicating the operational state of such unit (e.g., "charged" indicating that the unit is charging the battery of an MP3 player docketed therein); (6) **frequency tuning control** and/or frequency indicator, etc.

(Application, page 4, second full paragraph (emphasis added).)

> 1. An audio player assembly comprising:
> (a) an MP3 player; and
> (b) an audio player unit comprising at least one speaker and optionally an FM receiver operatively coupled with the speaker, wherein said audio player unit is operatively connected with the MP3 player for receiving an audio signal

produced by the MP3 player and for outputting said audio signal through the at least one speaker thereof.

2. The audio player assembly of claim 1, wherein said audio player unit comprises an [*sic*, a] modular docking unit having a main body portion with a docking cavity therein for docking said MP3 player.

* * *

13. The audio player assembly of claim 2, wherein the modular docking unit comprises a frequency tuning control on the main body portion.

(Application, pages 10-11.)

7. The second full paragraph at page 4 of the present application uses the optional term "**may**" in describing that a "modular docking unit **may comprise** ... [a] frequency tuning control." Based on the use of the phrase "may comprise" in this context – signifying "might comprise" or "could comprise" – one of ordinary skill in the art at the time the invention was made would understand that a frequency tuning control need not necessarily be incorporated into a modular docking unit. Such idea is reinforced by illustration of raised cylindrical knobs (which would be immediately recognizable by one skilled in the art as control elements) outside of the modular docking unit in each of drawing figures 1-3 as originally filed. Thus, upon review of the original written description in combination with the originally-filed drawings, one of ordinary skill in the art at the time the invention as made would readily understand that control elements could be placed outside the modular docking unit. Moreover, since the only control functions expressly described in the written description relate to frequency tuning control, one of ordinary skill in the art at the time the invention was made would understand that one of the raised cylindrical knobs or control elements illustrated outside the modular docking unit in figures 1-3 could and would be used for this such control function – i.e., frequency tuning control.

8. In the present application, original claim 13 was presented as a dependent claim, thus representing a subset of features that could be, or might be, embodied in independent claim 1 (e.g., with the features of intervening claim 13). Upon review of the entire original application, including the drawings that illustrate raised cylindrical knobs consistent with control elements disposed outside of the modular docking unit, one of ordinary skill in the art at the time the invention was made would understand that original claim 13 discloses one possible location of the "frequency tuning control" (i.e., on the modular docking unit), and that the drawings disclose another possible location of a frequency tuning control (i.e., outside a modular docking unit).

9. At page 9, in the last full paragraph, the present application informs the reader of the following:

> While the invention has been described herein with respect to various illustrative aspects, features and embodiments, it will be recognized that the invention is not thus limited, but that the present invention extends to and encompasses other features, modifications, and alternative embodiments, as will readily suggest themselves to those of ordinary skill in the art based on the disclosure and illustrative teachings herein. The claims that follow are therefore to be construed and interpreted as including all such features, modifications and alternative embodiments, within their spirit and scope.

The preceding language thus alerts the reader to consider the specification expansively, without rigidly or unduly narrowing the scope of the invention to particular configurations described in connection with certain examples. The express contemplation of "other features, modifications, and alternative embodiments, as will readily suggest themselves to one of ordinary skill in the art," taken in conjunction with the drawings showing raised cylindrical knobs consistent with control elements disposed outside a modular docking unit, reinforces the fact that one skilled in the art at the time the invention was made would interpret the specification as disclosing a frequency tuning control disposed outside a modular docking unit.

10. As the inventor of the present application, I further confirm that at the time the present invention was made, I contemplated that a frequency tuning control could be placed at any convenient and user-accessible location on a physical structure of an audio player assembly. I further contemplated that the two raised cylindrical knobs disclosed in the figures were control elements, with one being used for frequency tuning control and the other used for volume control.

I declare under penalty of perjury that the facts set forth in this declaration are true and correct, that all statements made of my own knowledge are true, and that all statements made on information and belief are believed to be true. I have been hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of the application or any resulting patent.

Executed at CHARLESTON S.C., this 18th day of April, 2007.

Jeff Grady
President and CEO
Netalog, Inc.

Enclosure:
Appendix A (copy of original drawing figures 1-3)

EXHIBIT A

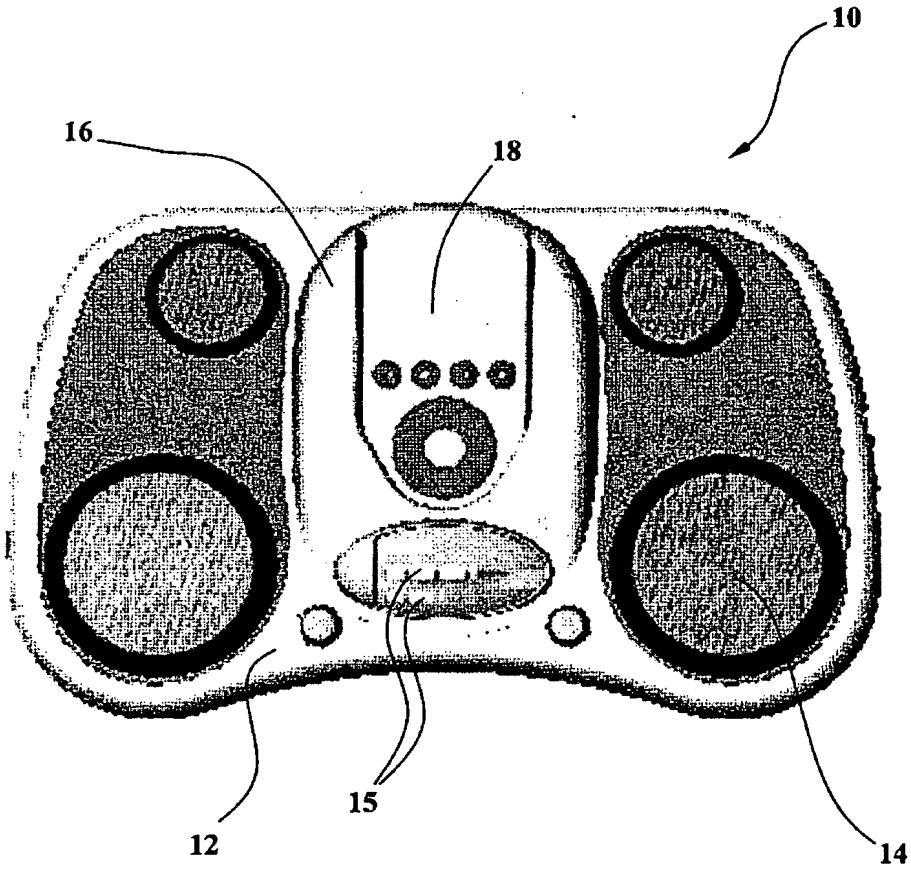

Figure 1

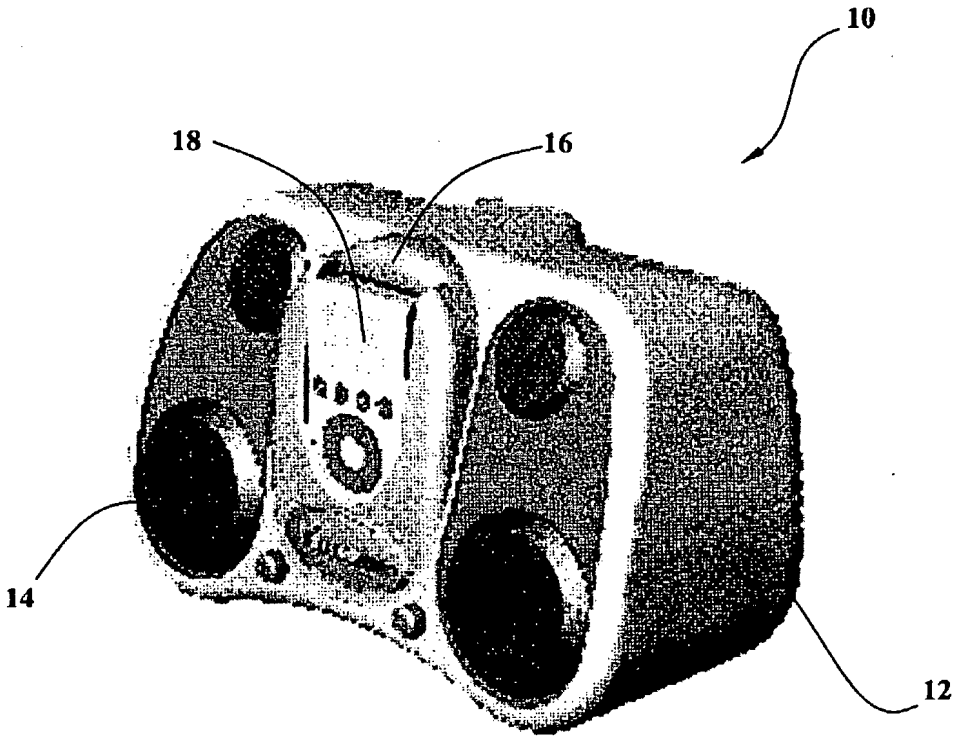

Figure 2

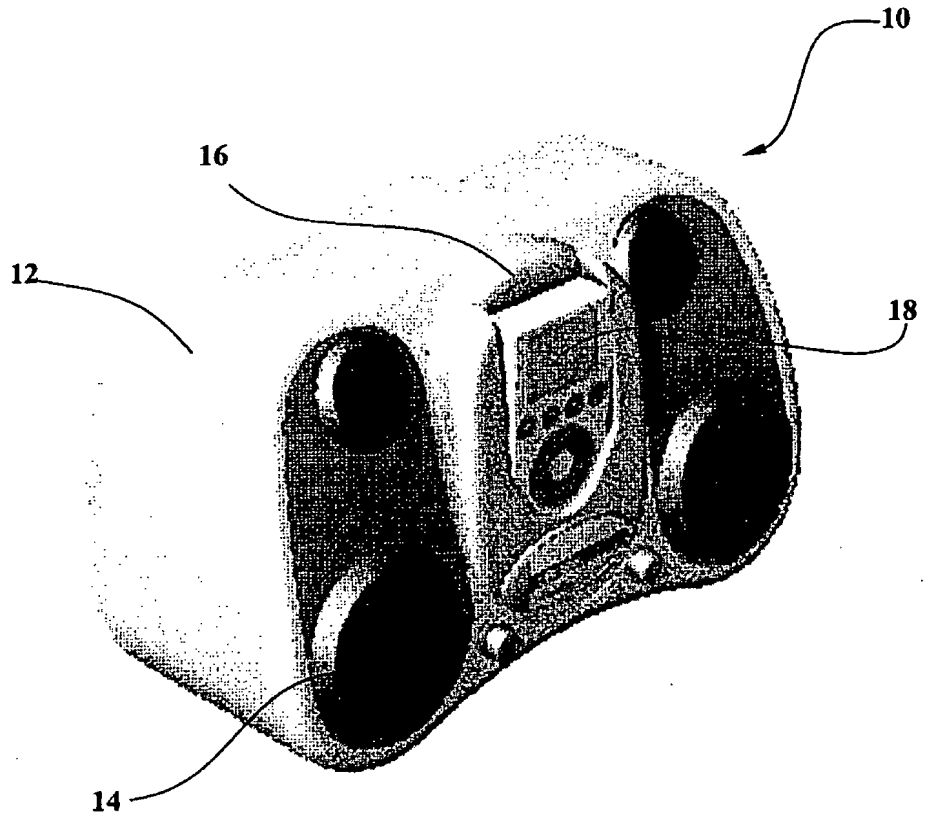

Figure 3